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9 and Buell Distribution Company, LLC

10 **UNITED STATES BANKRUPTCY COURT**  
11 **EASTERN DISTRICT OF WASHINGTON**

12 In re:

13 **John and Jennifer D. Shumate;**  
14 **Shumate, Inc.;**  
15 **Shumate Tri-City, LLC; and,**  
16 **Shumate Spokane, LLC,**

17 Debtors.

Bankruptcy Case Nos: **09-05078-FLK11,**  
**09-05079-FLK11,**  
**09-05080-FLK11,**  
**09-05081-FLK11**

18 **OBJECTION ON AMENDED**  
19 **MOTION FOR ORDER**  
20 **DETERMINING APPLICABILITY**  
21 **OF AUTOMATIC STAY TO**  
22 **NOTICES OF TERMINATION**  
23 **PENDING AT PETITION DATE**

24 Harley-Davidson Motor Company, Inc. ("HDMC") by and through its  
counsel Nancy L. Isserlis of Winston & Cashatt and Peter Stone of Foley &

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1 Lardner LLP hereby objects to the amended motion filed herein in each of these  
2 bankruptcy cases for an Order Determining that the automatic stay applies to the  
3 notices of termination which were pending as of the date of the petition date in  
4 each of these cases.  
5

6 John Michial Shumate and Jennifer D. Shumate ("Shumates"), Shumate,  
7 Inc., Shumate Spkane, LLC, and Shumate Tri-City, LLC (collectively, the  
8 "Debtors"), filed its original motion on January 6, 2010, and Harley-Davidson  
9 Motor Company, Inc. ("HDMC") and Buell Distribution Company filed an  
10 objection to this original motion on January 15, 2010. Shumates' Amended  
11 Motion is identical to its original motion, except that it now relies on § 362(a)(1)  
12 and (3). HDMC and Buell Distribution Company noted these were the statutes at  
13 issue in its original objection, and Shumate is apparently now making a correction.  
14  
15

16 By letters dated August 26, 2009 and pursuant to RCW 46.93, HDMC  
17 notified Shumate Tri-City, LLC and Shumate Spokane, LLC that their Harley-  
18 Davidson and Buell Dealer Contracts would be terminated for good cause effective  
19 15 days from their receipt of the letters. On September 9, 2009 and prior to  
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1 expiration of the 15 day notice period, Shumate Tri-City and Shumate Spokane,  
2 Shumate, Inc. (which owns Shumate Tri-City and Shumate Spokane), and John  
3 Michial Shumate and Jennifer D. Shumate (two of the owners of Shumate, Inc.)  
4 filed voluntary petitions for bankruptcy under Chapter 11. At the time, all that was  
5 necessary for the dealer terminations to become effective was the passage of a  
6 couple of more days time. However, pursuant to Bankruptcy Code Section  
7 108(b)(2), Shumate Tri-City and Shumate Spokane were provided an additional 60  
8 days to pursue their protest rights under RCW 46.93. On October 9, 2009,  
9 Shumate Tri-City and Shumate Spokane (along with Shumate, Inc. and Mr. and  
10 Mrs. Shumate - who actually had no standing to protest termination of the dealer  
11 contracts), filed a Petition for Determination with the Washington State  
12 Department of Licensing, Docket #2009-DOL-0052, and the matter was referred to  
13 the Washington Office of Administrative hearings for assignment to an  
14 administrative law judge to conduct a hearing to determine under state law whether  
15 there was good cause and a good faith basis for terminating the dealer contracts  
16 ("Termination Proceeding").  
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1 A Notice of Removal was filed on November 9, 2009 (subsequently joined  
2 by each of the Debtors) purporting to remove the Termination Proceeding from the  
3 state forum in which they chose to file it to the Western District of Washington  
4 Bankruptcy Court. HDMC timely filed a Motion for Remand, which Motion has  
5 now been transferred to this Court for further proceedings.  
6

7 The Debtors in this case are apparently now belatedly taking the position  
8 that the notices of termination and the Termination Proceeding they commenced  
9 are stayed by the filing of the bankruptcy petitions (and that the dealer contracts  
10 are therefore subject to Assumption or Rejection Provisions under 11 U.S.C. §  
11 365).  
12

13 HDMC's position is that the Termination Proceeding is not stayed under  
14 Section 362(a)(1), because it is not an action "against the debtor". The  
15 Washington State law remedies under RCW 46.93 were affirmatively invoked by  
16 Shumate Tri-City and Shumate Spokane to determine the propriety of the  
17 dealership terminations. It is also HDMC's position, and a position with which the  
18 debtors presumably agreed when they commenced the Termination Proceeding,  
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1 that the notices of termination were not automatically stayed by Section 362(a)(3)  
2 since no additional "act" was required by HDMC for the terminations to become  
3 effective.  
4

5 The stay is not applicable to the Notices of Termination issued by HDMC  
6 and Buell Distribution Corporation ("Harley-Davidson"). The automatic stay does  
7 not operate to prohibit the termination of dealerships when the Debtors themselves  
8 invoked affirmative relief in state court after the filing of the petition pursuant to  
9 RCW 46.93.040. Debtors could have brought this Motion much earlier and have  
10 failed to move forward with the state court determination in a timely manner.  
11

12 Debtors' Motion is not in good faith. These bankruptcies were filed on the  
13 eve of the expiration of the Notices of Termination. Since that date Debtors have  
14 consistently delayed the process of Creditors' contractual rights and have failed to  
15 affirmatively move forward on the determination of the applicability of the  
16 automatic stay. That case and the issues to be adjudicated have now been removed  
17 to this District and can and should be determined there as soon as possible.  
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1 Shumates and Debtors' Motion seeks a shortening of time. HDMC and  
2 Buell Distribution Company also requests an expedited consideration of this  
3 motion, along with a hearing on HDMC and Buell Distribution Company's Motion  
4 to Remand.  
5

6 HDMC therefore objects to the Motion as stated and requests a hearing on  
7 this matter as soon as possible.

8 DATED this 16 day of February, 2010.  
9

10 **WINSTON & CASHATT**

11 By:   
12

13 Nancy L. Isserlis  
14 David P. Gardner  
15 Attorneys for Defendants Harley-  
16 Davidson Motor Company, Inc. and  
17 Buell Distribution Company, LLC

18 By: /s/Peter J. Stone  
19

20 Peter J. Stone (*Pro Hac Vice Counsel*)  
21 Katherine M. Longley (*Pro Hac Vice Counsel*)  
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